

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8113 OF 2007

Kirit Vallabhdas Mistry .. Petitioner

Versus

Ashokbhai Pandya & Anr. .. Respondents

Mr.Suresh Gole for petitioner

Mr.Vinod Pandey for respondent No.2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th December 2007

P.C.

. This petition is directed against the order of the competent authority allowing the application preferred by respondent No.2 for impleading himself as party to the pending

proceedings.

2. Case No.50 of 2006 has been instituted by the present petitioner for eviction of first respondent from the premises being Room No.1, Ground floor, Soniya Karkiya Bhandari Chawl, N.L.Road, Vitthal Pada, Malad (West), Mumbai. The case of the petitioner is that the respondent No.1 occupies the said room as his licensee. The licence has come to an end and that is how the petitioner claims that the first respondent is liable to vacate.

3. Respondent No.1 appeared and applied for leave to defend. The petitioner was confronted with an application of second respondent for allowing him to join as party defendant. The case of second respondent is that the present petitioner is his elder brother and they were carrying on business jointly along with mother and brothers in the name and style of M/s.Amber

Plastics. The first respondent was an employee and was in need of residential premises. Upon his request, the suit premises were given to him. A reference is made to a writing of 24th April 2006. There is a reference to other premises which have been acquired and the differences in the family leading to filing of civil suit in the city civil court.

4. The case is that, on the false and fabricated documents, the notice has been issued. The petitioner filed a reply alleging that leave and licence agreement is conclusive and no claims with regard to the title and the proceedings or disputes of the nature referred to above would be decided and gone into by the competent authority. Now the second respondent has put in issue the genuineness of the agreement which forms part of the case of the present petitioner in the application.

5. In my view, in the peculiar facts of this case, when the suit was already filed by the second respondent and the same is pending, the competent authority erred in law in entertaining an application for joinder and allowing it by the impugned order. The case before the competent authority is that the leave and licence agreement has been terminated. Respondent is in possession as licensee. That case is being decided on the basis of the application for leave to defend made by the first respondent. In such circumstances, whether the petitioner could have filed the application or whether he is exclusively entitled to the premises or not are matters which are not within the purview of the authority. More so, when the suit is pending.

6. In the light of the above, the order under challenge cannot be sustained. It is accordingly quashed and set aside. Application of the second respondent stands dismissed.

7. However, it is clarified that all such findings, including observations made by this Court shall not preclude the second respondent from prosecuting his own suit and the said suit must be decided on its own merits and uninfluenced by any observations made by the competent authority or this court. Petition allowed. No costs.

(S.C.Dharmadhikari, J)